Has the plaintiff made out a case for specific performance? I say he has. It must be remembered that the ground upon which a court of equity enforces specific performance of a contract affecting land is that it acts upon the equities arising out of the changed position caused by the acts of the parties done in execution of the contract and not upon the contract itself. The defendants by their indulgence in extending the date for completion on not less than six occasions have lulled the plaintiff into a sense of false security and have justified him in assuming that he would be given reasonable time to complete the contract. It would therefore be inequitable, in view of the dealings which had taken place between the parties, to allow the defendants to enforce his strict legal rights against the plaintiff which he had been led to believe would not be enforced against him. Another factor in his favour is that he has averred and proved a continuous readiness and willingness to perform the contract from the date of the contract to the time of hearing: (*Ardeshir* v. *Flora Sasson* [6]). This is confirmed by the negotiations between the parties down to and including 30th December 1967. Mr. Sault from the Bar did say on the date of hearing that his client was ever ready, and willing to deposit the balance of the purchase money into court on any day specified. In my view this further confirms the plaintiff's continuous readiness and willingness to perform the contract.

In the circumstances I will order specific performance.

Specific performance ordered.

Solicitors: *Sault, Keith Sellar & Co.; Shearn, Delamore & Co.*

HOME LUCK INVESTMENTS SDN. BERHAD v. COMMISSIONER OF FEDERAL CAPITAL OF KUALA LUMPUR

[O.C.J. (Raja Azlan Shah J.) March 24, 1969]
[K.L.—Originating Motion No. 14 of 1967]

Local Authority — Rating — Vacant land — "Improved value" — Caution in applying English precedents in rating law — Town Boards Enactment (Cap. 137), 2, 25, 28, 32 and 44.

Statute — Interpretation of words used in — Duty of court.

This was an appeal against the decision of the Pesuroh Jaya, Ibu Kota, Kuala Lumpur (Commissioner of Federal Capital) confirming the annual value of land belonging to them. The land was vacant land and an application to build 56 flats on it had been refused on the ground that part of the land might be required for a proposed road. The land was assessed on the basis of 10% of the "improved value", that is the capital sum which the land might be expected to realise if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require. The value of the part of the land affected by the proposed road was calculated on a deferred or reduced value. It was argued for the appellant that the English concept of "beneficial ownership" should be applied.

Held, dismissing the appeal: (1) there is a fundamental distinction between the English rating law and the local rating law, in that under the local law the rate is borne by the owner, is a first charge on the rateable holding, and is exigible even if there is no occupier and therefore caution must be exercised in depending on the English precedents on rating law for guidance;

(2) in this case the respondent was justified in opting to assess the annual value of the land on 1/10th of the improved value;

(3) in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed.

Cases referred to:—

(1) *Cameron* v. *Mersey Docks* 11 E.R. 1405 at 1429.

(2) *West Bromwich School Board* v. *Overseers of West Bromwich* (1884), 13 Q.B.D. 999.

(3) *London County Council* v. *Churchwardens of Erith* [1893] A.C. 562.

(4) *Port of London Authority* v. *Assessment Committee of Orsett Union* [1920] A.C. 273.

(5) *Kingston Union* v. *Metropolitan Water Board* [1926] A.C. 331.

(6) *Tanggamah Cumarasamy* v. *Chairman Town Council Taiping* [1958] M.L.J. 290.

(7) *Magor* v. *Newport Corporation* [1952] A.C. 189, 191.

(8) *Lee Wah Bank* v. *Commissioner of Federal Capital* [1962] M.L.J. 23, 24.

ORIGINATING MOTION.

James Puthucheary (*Alexander Lee* with him) for the appellants.

Robert K.C. Hoh (*V.C. George* with him) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an appeal by Home Luck Investments Sdn. Berhad against the decision of the Pesuroh Jaya Ibu Kota, Kuala Lumpur, confirming the annual value of the land held under Grant for land No. 1616 for Lot No. 12 Section 67, Town of Kuala Lumpur of $11,060. Tht appeal is directed solely to the question of rateability.

The appellants are a Company incorporated in Malaysia and is the registered proprietor of the said land. The area of the said land is approximately 67,387 sq. feet (about 1½ acres). It is a level piece of land situated at Jalan Horley and suitable for buildings or similar uses. The said land was first assessed at an annual value of $7,400 on the basis of the estimated gross rental of the temporary houses on it. The appellants bought the said land in December 1964 for $429,000 i.e., at $6.37 per sq. foot. The said temporary buildings were demolished in 1965 and as a result the annual

value of the land was assessed as vacant land with effect from 1st July, 1965 at $42,900, which is 10% of the purchase price. No objection was taken by the appellants to this annual value and rates were paid by them from 1st January 1965 on that annual value. In July 1965 they applied for planning permission to build 56 flats on the said land. That application was refused under section 145(ii) of the Town Boards Enactment, on the ground that, that part of the said land may be required for a proposed road over it. The matter rested there and the appellants did not object to the same annual value of $42,900 published in November 1965 for the year 1966. However, in January 1966, they applied to the respondent for the reduction in the annual value for the year 1966. The respondent was precluded from considering this request because there was no statutory provision to make any reduction in rates under those circumstances. When the assessment list for the year 1967 was published in November 1966 they lodged an objection to the annual value under the provisions of section 40 of the Town Boards Enactment. As a result of the objection, the annual value was reduced to $11,060 with effect from 1st January 1967. It was assessed in the basis of vacant land — 10% of the improved value under the second proviso to section 2 of the Town Boards Enactment. The assessment of the annual value was made on the basis of $2 a square foot, which is comparable to the prices of neighbouring land. In arriving at that figure, account was taken of the proposed road. The value of the part of the land affected by the proposed road was calculated on a deferred or reduced value because it was considered that the land would have the full market value when it will be acquired in the future and therefore the present value is the reduced value.

Under the approved town plan, the said land is zoned for open development, that is, for educational, religious or welfare purposes. Under the draft town plan gazetted on 6th April 1967, there is a proposed major road 122 feet wide running across Jalan Imbi and the said land and joining Jalan Pekeliling. This proposed middle ring road would affect approximately 30,387 sq. feet of the said land which would be frozen. The unaffected part, approximately 34,500 sq. feet, is still available for development. Under the draft town plan the unaffected part can still be used, e.g., construction of 32 units of flats of 5 persons per unit. It is established that after the first unsuccessful application to build 56 flats, the appellants, apart from making one enquiry, had made no attempt to sell the said land or any part thereof or made any application to the respondnet for alternative user.

It is alleged by the appellants that the said land is struck with sterility for the present and in the future. Consequently as the land, to use the words of Lord Cranworth in *Cameron* v. *Mersey Docks* [1] is "neither yielding nor capable of yielding any profit from its occupation" it is not a rateable holding. The basis of that allegation is that the respondent by imposing a restriction on the use of the land has made it impossible for the appellants or anyone to use it in any form whatsoever in order to earn rent. It is further said that in Kuala Lumpur rates are imposed on a percentage of the annual value of the holding and not on the improved or unimproved value (see L.N. 5638 dated 15th December 1966). Therefore, in considering annual value, one cannot, it is urged, divorce it from the concept of rent. It is either notional rent or actual rent or an estimate of notional rent or expected rent.

In interpreting the annual value in our Enactment, I have been asked to import the English concept of "beneficial ownership" in the same way as Lord Cranworth implied the words "beneficial occupation" into the English rating law. I now quote the speech of Lord Cranworth in *Cameron* v. *Mersey Docks, supra,* at page 1429:—

> "If by beneficial occupation is meant any occupation of something valuable, something in its own nature beneficial to some one I think it is fair to consider that word as impliedly included in the statute. It was not meant to impose the duty of contributing to the relief of the poor on any one merely because he might be the occupier of a barren rock neither yielding or capable of yielding any profit from its occupation."

A list of other English authorities were also cited, namely, *West Bromwich School Board* v. *Overseers of West Bromwich,*[2] *London County Council* v. *Churchwardens of Erith,*[3] *Port of London Authority* v. *Assessment Committee of Orsett Union,*[4] *Kingston Union* v. *Metropolitan Water Board.*[5]

In inviting me to adopt that approach Mr. Puthucheary on behalf of the appellants argued that he is fortified by the judgment of Good J. in *Tanggamah Cumarasamy* v. *Chairman Town Council Taiping* [6] where he submitted the learned judge had imported the English concept of "beneficial occupation" into our rating law. That is not a correct appraisal of the case. The issue there was whether the Control of Rent Ordinance affected the annual value of controlled premises for rating purposes. In that case the annual value was based on the hypothetical value which might be reasonably expected from a hypothetical tenant who took the property from year to year *rebus sic stantibus.* In the present appeal we are not concerned with premises controlled or otherwise. The subject matter here is vacant land but subject to a limitation imposed by the res-

pondent and the annual value is based not on the hypothetical tenant paying a hypothetical rent from year to year but one-tenth of the improved value. In considering the annual value the learned judge expressed the view that the Rating Authority must not ignore the statutory limitations on the annual rent exigible by the landlord. Nowhere in the judgment did he import the English concept of "beneficial occupation."

It is beyond doubt that the core of our laws has, broadly speaking, been derived from English laws but we must not forget that we have our own laws, our own economic and social life and our own peculiar problems which we have to solve. We must therefore be cautious not to depend for guidance too heavily and too uncritically on English insight and experience of the working of their rating law and the solution of their problems.

For my part I have no hesitation in rejecting the English approach in considering our rating law. The duty of the court is to interpret the words that the legislature has used (see *Magor* v. *Newport Corporation* [7]) unguided by any English precedent: (see *Lee Wah Bank* v. *Commissioner of Federal Capital* [8]). The reason for this is to be found in the fundamental distinction between our respective rating laws. In English law it is the occupier of property who is liable to rates; rateability is not concerned with the owner's interest. In Kuala Lumpur the rate is borne by the owner, is a first charge on the rateable holding, and is exigible if there is no occupier. Therefore in considering rateability in Kuala Lumpur we must look to the provisions of the Town Boards Enactment (Cap. 137) unaided by any foreign element.

Section 25 and 32 of the Town Boards Enactment empower the respondent to impose rates on owners of holding. "Holding" is defined in section 2 as any land, with or without buildings thereon, which is held under a separate document of title. Therefore the owner of land, with or without buildings, vacant or occupied, is liable to pay rates. Section 28 provides the basis of assessment which is upon the annual value of holdings or upon the improved or unimproved value of holdings as the case may be. "Annual value" is defined as the estimated gross annual rent at which the holding might reasonably be expected to let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes (in other words the annual estimated rent which the land with or without buildings may be let) or where the land is vacant, unoccupied or only partially built upon, the respondent has an option to assess the annual value at the annual estimated rent or one-tenth of the improved value. "Improved value" of land is the capital sum which the land might be expected to realise if offered for sale on such reasonable terms and conditions as *bona fide* seller would require.

Putting it in a compendious form, as long as the subject matter is land (excluding mining land) held under a separate document of title, the owner is liable to pay rates. User is not rateable. It goes to valuation only. In the present appeal it is not in controversy that the subject matter is land and the appellants the owner thereof. As such they are liable to pay rates. The respondent has opted to assess the annual value based on one-tenth of the improved value i.e., market value. In my view, notwithstanding the refusal by the respondent to permit the appellants to build 56 flats, the land has development potential e.g., the unaffected part is suitable for the construction of 32 units of flats of 5 persons per unit or similar uses under the draft town plan. The market value is the price a hypothetical willing seller is prepared to sell and the price a hypothetical willing buyer is prepared to pay. In arriving at the market value, both the speculative and investment elements are relevant. It is not correct to say that until acquisition proceedings take place the land has no market value at all. The correct view is that until acquisition the said land has an appreciative value.

There is one small point to be considered. It is said that the respondent is estopped from averring that the unaffected part of the said land has development potential. Counsel has invited me to the pleadings in Civil Suit No. 404 of 1968 in which the appellants are the third plaintiffs and the respondents the first defendants. The plaintiffs in that case (still pending) are questioning the legality of the respondents' proposed action in respect, *inter alia*, of the said land. The plaintiffs by paragraph 7 of their statement of claim aver *inter alia* that "the remainder of the 3rd plaintiff's land was rendered unfit and incapable of any kind of user or development." The respondent by paragraph 1 of his statement of defence admits paragraph 7 of the claim but in paragraph 2 denies that the plaintiffs have been deprived of their property or any part thereof as alleged or at all. In my opinion paragraph 1 of the defence must not be read in isolation but subject to the averment contained in paragraph 2 thereof and when that is done, it is clear that the respondent has put in a general traverse. For the above reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Shook Lin & Bok.*